

## **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NINO MARTINENKO, on behalf of herself and  
Others similarly situated,

Plaintiff,

-against-

Case No: 22-CV-518

212 STEAKHOUSE, INC., and NIKOLAY VOLPER,

Defendants.  
-----X

EXAMINATION of a Non-Party Witness

DAGMARA HUK

December 20, 2022

TENEJA THWEATT, Notary Public  
489178

SINCE  
1972



**BARKLEY**

Court Reporters

barkley.com

(310) 207-8000 Los Angeles  
(310) 207-8000 Century City  
(916) 922-5777 Sacramento  
(951) 686-0606 Riverside  
(212) 808-8500 New York City  
(312) 379-5566 Chicago

(415) 433-5777 San Francisco  
(408) 685-0550 San Jose  
(800) 222-1231 Martinez  
(818) 702-0202 Woodland Hills  
(347) 821-4611 Brooklyn  
00+1+800 222 1231 Paris

(949) 955-0400 Irvine  
(760) 322-2240 Palm Springs  
(702) 366-0500 Las Vegas  
(702) 366-0500 Henderson  
(518) 490-1910 Albany  
00+1+800 222 1231 Dubai

(858) 455-5444 San Diego  
(800) 222-1231 Carlsbad  
(800) 222-1231 Monterey  
(516) 277-9494 Garden City  
(914) 510-9110 White Plains  
001+1+800 222 1231 Hong Kong

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 NINO MARTINENKO, on behalf of herself and  
5 Others similarly situated,

6 Plaintiff,

7 -against-

8 Case No: 22-CV-518

9 212 STEAKHOUSE, INC., and NIKOLAY VOLPER,

10 Defendants.  
11 -----X

12 EXAMINATION of a Non-Party Witness,  
13 DAGMARA HUK, taken by the Defendants, pursuant to  
14 Court Order, held at the Law Offices of Mitchell S.  
15 Segal, P.C., 137 5th Avenue, 9th Floor, New York,  
16 New York 10010, on December 20, 2022, at 1:38 p.m.,  
17 before a Notary Public of the State of New York.

18 \*\*\*\*\*

19 BARKLEY COURT REPORTERS

1 A P P E A R A N C E S:

2 JOSEPH & KIRSCHENBAUM, LLP  
3 Attorney for Plaintiff  
32 Broadway, Suite 601  
4 New York, New York 10004  
(212)688-5640

5 BY: MICHAEL DiGIULIO, ESQ.  
6 Mike@jk-llp.com

7  
8 LAW OFFICES OF MITCHELL S. SEGAL P.C.  
Attorney for Defendants  
9 1129 Northern Boulevard, Suite 404  
Manhasset, New York 11303  
10 (516)415-0100

11 BY: MITCHELL S. SEGAL, ESQ.  
12 Msegal@segallaw.com

13  
14 ALSO PRESENT:

15 NIKOLAY VOLPER, Defendant  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## S T I P U L A T I O N S :

IT IS STIPULATED AND AGREED by and between the attorneys for the respective parties herein, and in compliance with Rule 221 of the Uniform Rules for the Trial Courts:

THAT the parties recognize the provision of Rule 3115 subdivisions (b), (c) and/or (d). All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the C.P.L.R.;

THAT every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

THAT a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement on the basis therefore. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

THAT an attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in Section 221.2 of these rules, and, in such

1 event, the reason for the communication shall be  
2 stated for the record succinctly and clearly.

3 THAT the failure to object to any question or to  
4 move to strike any testimony at this examination  
5 shall not be a bar or waiver to make such objection  
6 or motion at the time of the trial of this action,  
7 and is hereby reserved; and

8 THAT this examination may be signed and sworn to by  
9 the witness examined herein before any Notary  
10 Public, but the failure to do so or to return the  
11 original of the examination to the attorney on  
12 whose behalf the examination is taken, shall not be  
13 deemed a waiver of the rights provided by Rule 3116  
14 and 3117 of the C.P.L.R, and shall be controlled  
15 thereby; and

16 THAT the certification and filing of the original  
17 of this examination are hereby waived.  
18  
19  
20  
21  
22  
23  
24  
25

1 D A G M A R A H U K, the witness herein, having  
2 been first duly sworn by a Notary Public of the  
3 State of New York, was examined and testified as  
4 follows:

5 EXAMINATION BY

6 MR. SEGAL:

7 Q. State your name for the record, please.

8 A. Dagmara Huk.

9 Q. State your address for the record, please.

10 A. 342 East 62nd Street, Number 19, New York,  
11 New York 10065.

12 Q. Good afternoon. My name is Mitch Segal. I  
13 represent the defendants in this action. I'm here  
14 to depose you pursuant to this lawsuit. I'm going  
15 to ask you questions. We'll try not to talk over  
16 each other. And just give an audible answer so the  
17 transcriber can record the answer.

18 Have you ever been in a deposition before?

19 A. Yes.

20 Q. I'm sorry?

21 A. Yes.

22 Q. When was that?

23 A. My previous case, not related to this.

24 Q. Another labor case?

25 A. No.

1 D. Huk

2 Q. Okay. So you have. You understand.

3 Okay. So Dagmara, when did you come to the  
4 U.S.?

5 A. In 2008.

6 Q. And where were you from originally?

7 A. I'm Polish.

8 Q. So you're from Poland?

9 A. Mm-hmm.

10 Q. And what's your educational background?

11 A. Healthcare.

12 Q. Did you go to high school?

13 A. In Poland.

14 Q. Did you to college?

15 A. Yes.

16 Q. In Poland?

17 A. Here.

18 Q. Where did you go?

19 A. Private college, then Hunter College, then  
20 City Tech in Brooklyn.

21 Q. And what did you study? Healthcare?

22 A. Healthcare.

23 Q. To do what?

24 A. To work in healthcare in a hospital.

25 Q. To be a...



1 D. Huk

2 A. Healthcare administrator.

3 (Reporter clarification.)

4 Q. Okay. And when did you graduate? When  
5 were you done with your college studies?

6 A. Not sure. I'm not sure. It was a while  
7 ago.

8 Q. Okay. Did you work in healthcare?

9 A. Yes.

10 Q. And where did you work?

11 A. Healthcare clinic in Brooklyn and then  
12 Sloan Kettering.

13 Q. Okay. What was the healthcare clinic in  
14 Brooklyn?

15 A. Multispecialty.

16 Q. Where are they located?

17 A. In Greenpoint.

18 Q. You have the address?

19 A. Yes, 145 Nassau.

20 (Reporter clarification.)

21 Q. Nassau Street?

22 A. Mm-hmm.

23 Q. Okay. And how long did you work there for?

24 A. A while. Five, six years.

25 Q. Okay. When did you leave there?

1 D. Huk

2 A. Don't remember. A while ago.

3 Q. You need to be a little more specific on  
4 your answers.

5 A. I can't give you -- I can't give you a year  
6 if I don't remember it. It was years ago. I've  
7 been here over -- like, while so --

8 Q. You've been here 14 years?

9 A. Yeah.

10 Q. You went to school. And thereafter you  
11 worked. So --

12 A. I did both.

13 Q. Correct. So --

14 A. I worked and go to school at the same time.

15 Q. How many years did you go to school?

16 A. Sixish.

17 Q. Okay. So 2014, then you graduated or you  
18 were done with school?

19 A. Possibly.

20 Q. Okay. And so possibly you graduated in  
21 2014, maybe, possibly you worked at the Brooklyn  
22 healthcare place for five years. So maybe 2019?

23 A. I start working there before I started  
24 school.

25 Q. Okay. So how many years after school did

1 D. Huk

2 you work there for?

3 A. How many years? I don't remember. It was  
4 a while ago. I don't remember if I -- no. I  
5 didn't finish. I left the clinic before I  
6 graduated school.

7 Q. By the way, I forgot to ask two questions.  
8 Are you under the influence of any thing today?

9 A. No.

10 Q. Did you take any drugs?

11 A. No.

12 Q. Any alcohol in the last 24 hours?

13 A. No.

14 Q. Okay. So when did you start at Sloan  
15 Kettering?

16 A. Can I pull up my resume so I can give you  
17 exact dates?

18 MR. DIGIULIO: No.

19 Q. No. Just from your best recollection.

20 A. 2017 maybe.

21 Q. And you worked there for how long?

22 A. Year and a half.

23 Q. Okay. And what did you do after that,  
24 before you started at 212 Steakhouse?

25 A. I worked at the restaurant. I worked at

1 D. Huk

2 the other restaurant.

3 Q. What's the other restaurant?

4 A. Bistango.

5 Q. Bistango?

6 A. Bistango, yes.

7 Q. Where is that?

8 A. Between 29th and 3rd.

9 Q. And when did you start there, do you  
10 remember?

11 A. I worked there throughout the school. I  
12 worked at the healthcare clinic. I went to school,  
13 and then I was working at Bistango as well.

14 Q. When was the last time you worked at  
15 Bistango? How do you spell that, by the way?

16 A. B-I-S-T-A-N-G-O.

17 Q. Bistango. Okay.

18 A. They shut down.

19 Q. Is that why you left there?

20 A. Mm-hmm.

21 Q. Do you know when that was?

22 A. During COVID.

23 Q. Oh, okay. In the beginning, March of 20 --

24 A. Mm-hmm.

25 (Reporter clarification.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D. Huk

A. Yes.

Q. What was your next job after Bistango when they closed?

A. After Bistango, I worked at Jue Lan.

Q. Jue Lan?

A. Mm-hmm.

Q. Right here?

A. Yes.

Q. When did you start there?

A. The summer after things were opened outdoors. But I didn't stay --

(Cell phone interruption.)

Q. What was your position at Jue Lan?

A. Server.

Q. When did you start? I'm sorry. What did you say, summer of '20?

A. July.

Q. And that was because they had the outdoor thing going on?

A. Mm-hmm.

Q. July of '20?

A. Yes.

Q. How long did you work there for?

A. Maybe two months.

1 D. Huk

2 Q. Why did you leave there?

3 A. I didn't like the environment.

4 Q. What do you mean by that?

5 A. Just didn't like the environment.

6 Q. The staff, the patrons?

7 A. It was long hours.

8 Q. You didn't work lunch though, did you? I  
9 don't even think they had lunch back then.

10 A. I did work lunch there.

11 Q. You did. Okay.

12 So that was from July '20 to August '20?

13 A. Right before I started working at the  
14 steakhouse. Yes.

15 Q. So when did you start at 212 Steakhouse?

16 A. End of summer, August 2020.

17 Q. And at Bistango you were a server also?

18 A. Server, bartender, manager.

19 Q. And Jue Lan you were just a server?

20 A. Mm-hmm.

21 Yes. Sorry. Just a habit.

22 Q. That's okay. Not a problem.

23 And what was your position when you started  
24 at 212 Steakhouse?

25 A. Bartender.

1 D. Huk

2 Q. How did you find out about the position at  
3 212 Steakhouse?

4 A. Through craigslist.

5 Q. You started in August 2020, and when did  
6 you work until?

7 A. October -- September, October 2021.

8 Q. How many days a week did you work?

9 A. Depending how many days they needed me for.  
10 I would say five, six.

11 Q. What days were those?

12 A. I'm sorry?

13 Q. Which days?

14 A. Depending on the schedule. The schedule  
15 changes every week.

16 Q. Would you work weekends every week?

17 A. Sure. Always Saturdays.

18 Q. Sundays?

19 A. Sundays.

20 Q. And how many hours a week did you work --  
21 how many hours per day did you work?

22 A. Depending on the need, from opening through  
23 closing.

24 Q. Well, did you --

25 A. Sometimes we stayed longer.

1 D. Huk

2 Q. Did you work lunch hours?

3 A. We didn't have lunch back then. We just  
4 started towards the end.

5 Q. Okay. So on average, when did you start  
6 work?

7 A. Can you repeat the question?

8 Q. Yes. Generally what time did you start?

9 A. We would start at 3:00.

10 Q. 3:00?

11 A. 3:00 or 4:00, yes.

12 Q. Well, 3:00 or 4:00 is two different -- what  
13 do you think?

14 A. Sometimes we had to come in early, like, to  
15 take care of -- unpack the liquor or help with  
16 something. So most of the time it was 3:00,  
17 sometimes it was 4:00.

18 Q. What time did you leave?

19 A. I would say 11:00, 11:30 sometimes. If we  
20 had a party, maybe 12:00.

21 Q. How many times did you have a party there  
22 on average?

23 A. When it happened.

24 Q. You have to try to be succinct with your  
25 answers.



1 D. Huk

2 MR. DiGIULIO: Objection.

3 Q. You can't just be general.

4 MR. DiGIULIO: Objection. She's  
5 answering the best that she can.

6 Q. Sometimes is not going to work.

7 In your opinion, how many parties did they  
8 have per week, if any?

9 MR. DiGIULIO: Objection to the  
10 form. You can answer, if you know.

11 A. You can't generalize how many parties a  
12 week. It's a restaurant business.

13 Q. I'm familiar.

14 A. I'm glad you are.

15 Q. How many parties a week?

16 A. I don't know how many parties. I can't  
17 answer that question.

18 Q. Zero, once every week, two every week?

19 A. I can't answer that question.

20 Q. You can't answer that question?

21 A. It always depends on a season or the --

22 Q. Well, you didn't work there for that many  
23 seasons, right? So you worked there from --

24 MR. DiGIULIO: All four, I think.

25 A. Yeah.

1 D. Huk

2 Q. At best. So what seasons were busier for  
3 parties?

4 A. Holidays are busier. Easter, maybe, was  
5 busier, birthdays. It all depends. There's no --

6 Q. Birthdays isn't a season. Easter is one  
7 week.

8 A. Like, January is usually slower, as you  
9 know. Then it picks up around March, April, May,  
10 then September when kids are in school. It all  
11 depends on the season.

12 Q. Okay. So you really don't know. All  
13 right?

14 A. I didn't say I don't know.

15 Q. Well, you were answering (unintelligible).  
16 Okay. What were you paid?

17 MR. DiGIULIO: Objection to the  
18 form. You can answer.

19 Q. Withdrawn. I'll change the question.  
20 How much per hour did you work?

21 MR. DiGIULIO: Objection to the  
22 form. You can answer. You can answer.

23 A. How much per hour, \$10.

24 Q. Was that through the whole time you worked?

25 A. Yes.

1 D. Huk

2 Q. Okay. And did you earn tips on top of  
3 that?

4 A. Yes.

5 Q. And what was your average tips per day?

6 A. You mean cash tips?

7 Q. Well, both credit card and cash?

8 A. Average per day?

9 Q. Or week, whatever is easier for you --

10 A. Week, below -- on my paycheck, below a  
11 thousand.

12 Q. A thousand?

13 A. Below usually. It was like 800, 900.

14 Q. Eight hundred to a thousand; is that fair  
15 to say?

16 A. Yes.

17 Q. And that is both credit card and cash, or  
18 just credit card?

19 A. Credit card.

20 Q. What about cash?

21 A. I don't really keep track of -- I don't  
22 really keep track of my cash. Maybe 400.

23 Q. So you don't count your cash when you get  
24 the cash?

25 A. No, I don't.

1 D. Huk

2 Q. That's interesting.

3 Okay. And that's per week, 400, or per  
4 day?

5 A. Per week.

6 Q. And why did you leave?

7 A. Because I was hired as bartender, and I got  
8 demoted to a server without my permission.

9 Q. Who demoted you?

10 A. The owners.

11 Q. Who is that?

12 A. Nikolay.

13 Q. And why do you feel the -- I'm sorry. Why  
14 do you feel the server is a demotion from the  
15 bartender?

16 A. Because that's not position I was hired  
17 for.

18 Q. And why were you demoted?

19 A. Because --

20 MR. DiGIULIO: You can answer if  
21 you know.

22 A. I'm not -- honestly, I'm not sure.

23 Q. What do you think?

24 A. Because they hired another person.

25 Q. Okay. Why would they do that?

1 D. Huk

2 A. I'm not sure.

3 Q. How did you find out about this lawsuit,  
4 craigslist?

5 A. No. I don't think it was on craigslist.

6 Q. How did you find out?

7 A. Through my lawyer.

8 Q. Through your lawyer?

9 A. Yes. I got contacted by my lawyer.

10 Q. Your lawyer contacted you about the  
11 lawsuit?

12 A. (No verbal response.)

13 Q. And what did your lawyer say?

14 MR. DiGIULIO: Objection. Don't  
15 answer that.

16 Q. Okay. That's interesting.

17 Did you clock -- well, let's go back for a  
18 second.

19 So when you were paid, you received payroll  
20 checks?

21 A. You mean the printout?

22 Q. Yeah.

23 A. Not all the time. Most of the time we  
24 didn't.

25 Q. The checks that you received, were they

1 D. Huk

2 handwritten, or they were from a payroll company?

3 A. Handwritten.

4 Q. Did you ever get a check from a payroll  
5 company?

6 A. No.

7 Q. No?

8 A. (No verbal response.)

9 Q. When you went to work, did you clock in and  
10 clock out? In other words, when you walked in, did  
11 you have to put your ID, and you clocked into the  
12 POS system?

13 A. Yes, you have to use your number.

14 Q. And you clocked out also when you left?

15 A. Sure. Yes.

16 Q. And were you served a meal during the time  
17 you were there?

18 A. Family staff meal.

19 Q. Yeah. Right.

20 When did that happen?

21 A. Usually at the beginning of the shift.

22 Q. 4:00?

23 A. Mm-hmm. But we didn't really have time to  
24 do it because there were things we had to take care  
25 of. So it wasn't consistent.

1 D. Huk

2 Q. Well, was the time that they served the  
3 meal consistent, or it depended on your schedule  
4 and what you had to do?

5 A. Depending on the schedule.

6 Q. But they served it normally at 4:00?

7 A. Depends how busy the kitchen is. Sometimes  
8 it was 5:00; sometimes it was 4:00.

9 Q. 5:00 the restaurant opened up though, yes?

10 A. Mm-hmm.

11 MR. DIGIULIO: Yes?

12 THE WITNESS: Yes, I'm sorry.

13 Q. That's okay.

14 But you clocked in at 4:00. And when they  
15 served you, you never clocked out when they served  
16 the meal if you ever sat down and ate, did you?

17 A. No, because we didn't have a formal break.

18 Q. Well, the meal --

19 A. Meaning that if the meal was served, I  
20 would start eating. But if there was something --  
21 I had to answer phone, I had to get up and answer  
22 the phone call, meaning work, not have a break.

23 Q. What other things did you do besides  
24 bartending there?

25 A. Order supply, order liquor, go to the

1 D. Huk

2 liquor store, buy stuff. Go to do pay -- write the  
3 checks, clean, helping the kitchen, anything they  
4 needed.

5 Q. Was there one particular person in charge  
6 of payroll?

7 A. Yes, Imran.

8 Q. What about writing the checks?

9 A. He -- most of the time he would not write  
10 the checks. He would ask the staff to write the  
11 check.

12 Q. Who wrote the checks, primarily, out of the  
13 staff?

14 A. There was no primary person. It was  
15 sometimes me, sometimes Nino, some- --

16 (Cell phone interruption.)

17 (Whereupon, a discussion was held  
18 off the record.)

19 Q. Sometimes Nino, sometimes you?

20 A. So it depends who was working that day.

21 Q. Other than Nino and you, was there anybody  
22 else?

23 A. Sometimes Sasha.

24 Q. Sasha?

25 A. Sometimes Imran.



1 D. Huk

2 Q. What was the tip process at the end of the  
3 evening? How did that work?

4 A. It was a points system. You want me to  
5 explain it to you?

6 Q. No, I kind of know it.

7 And how did that work? Was there someone  
8 in charge of that or just at the end of the night?

9 A. Whoever was available.

10 Q. And did you get paid your credit card tips  
11 at the end of the week or every day? How did that  
12 work?

13 A. Weekly.

14 Q. Weekly?

15 A. Mm-hmm.

16 Q. And when you did the tips, was cash  
17 included in the tip sheets or not?

18 A. Was the cash included in the tip sheet?

19 Q. In other words, let me give you a  
20 hypothetical. Let's say you made \$200 in credit  
21 card tips. Let's say you made \$50 in cash tips.  
22 Was that included in everyone's analysis? Everyone  
23 said how much cash they made or just the credit  
24 cards?

25 A. Yes, it was written as well.

1 D. Huk

2 Q. I'm sorry?

3 A. It was written.

4 Q. It was written?

5 A. Yeah.

6 Q. Did you report the cash tips?

7 A. Yes.

8 Q. How did you do that?

9 I understand on the analysis. Did you  
10 report the cash tips to the owners of the  
11 restaurant?

12 A. Yes, it was written -- they could open the  
13 book and see how much we made.

14 Q. Do you know that you have to report your  
15 cash tips to owners of the restaurant so they can  
16 file a form with the IRS? Did you report that to  
17 them?

18 MR. DiGIULIO: Objection. Asked  
19 and answered. You can go again.

20 MR. SEGAL: I don't think it was,  
21 actually.

22 MR. DiGIULIO: You can answer his  
23 question again.

24 A. I don't think that's -- I mean, that's --  
25 to my knowledge, that's the manager's

1 D. Huk

2 responsibility to report whatever is there, because  
3 the evidence was visible to the manager. So that's  
4 not my duty. I was -- again, I was a bartender.  
5 So that's not my duty to report this to anybody.

6 Q. Did you report the cash tips on your tax  
7 return?

8 A. Yes, I did.

9 Q. So your tax return has cash tips on it?

10 MR. DiGIULIO: Objection. Asked  
11 and answered. You don't have to answer  
12 again.

13 MR. SEGAL: Yes, she does. Your  
14 objection is noted. She's got to answer  
15 again.

16 MR. DiGIULIO: Sure. One more  
17 time. Go ahead.

18 A. Yes, I reported cash tips.

19 Q. Okay. When you got your wage statement at  
20 the end of the year, what was it: a W-2 or -- was  
21 it a W-2?

22 A. W-2, yes.

23 Q. That W-2 included the hourly wage plus your  
24 credit card tips; is that correct?

25 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D. Huk

Q. Okay. But it didn't include the cash tips?

A. No.

Q. Okay. But you reported that, as you said,  
on top of that?

A. Well, my accountant takes care of that.

Q. Did he report it?

A. Yes. I believe so.

Q. Did you work full-time for 212 Steakhouse  
throughout your whole tenure?

A. Yes.

Q. Yes?

You never worked part-time for them?

A. No.

Q. After you left 212 Steakhouse, did you work  
part-time for them sometimes?

A. If I left, why would I work for them?

Q. I don't know.

A. Can you please rephrase the question.

Q. Well, you just answered it. So the  
answer's no, I guess?

A. I guess.

Q. Yes or no?

MR. DiGIULIO: Objection to the  
form. You answer.

1 D. Huk

2 A. (No verbal response.)

3 Q. Okay.

4 (Whereupon, a discussion was held  
5 off the record.)

6 Q. So I show you what was labeled as  
7 Defendant's Exhibit 4. And this is -- he'll  
8 explain it to you. And this is a page of your time  
9 records from August 31st to December 30th. So I  
10 want to show you this.

11 So that is your clock-in and clock-out; is  
12 that correct?

13 A. Yes.

14 Q. Okay. And so you never took a break,  
15 right? So there was only a beginning clock-in and  
16 an ending clock-out?

17 A. Correct.

18 Q. And this line here is the hours that you  
19 worked. Okay. And this period covers September,  
20 October, November and December.

21 A. Mm-hmm.

22 Q. And -- so if you look at the hours, are  
23 there many days that you worked over eight hours?

24 MR. DiGIULIO: Objection. The  
25 document speaks for itself. You can

1 D. Huk

2 answer.

3 A. As you can see (indicating).

4 Q. Not really?

5 A. I didn't say not really. I'm just saying  
6 the document speaks for itself.

7 Q. You're saying the document speaks for  
8 itself. Excellent. Very good.

9 There's only a couple of days where you  
10 worked more than eight days. So are you seeking  
11 claims for overtime wages?

12 A. Yes.

13 Q. How?

14 MR. DiGIULIO: Objection to the  
15 form. You can answer.

16 Q. Tell me how. Those are the hours that you  
17 worked.

18 A. I --

19 Q. Show me one week where you worked over 40  
20 hours.

21 A. I can't do the math right now.

22 Q. There probably is not one, to be honest  
23 with you.

24 MR. DiGIULIO: Objection.

25 Q. Did you ever work --

1 D. Huk

2 (Whereupon, a discussion was held  
3 off the record.)

4 Q. Was there ever a day where you worked in  
5 excess of ten hours?

6 A. I worked overtime.

7 Q. Well, we just went through it. You really  
8 didn't, but...

9 MR. DiGIULIO: Objection.

10 Q. All right. So let's go back to it then.  
11 Show me one week where you worked in excess of 40  
12 hours.

13 A. I need more reference than that. I'm not  
14 going to do the math. I did work over 40 hours.

15 Q. Based on what? Those are your time  
16 records.

17 A. On the hours.

18 Q. Are those correct? Are those the right  
19 clock-in and clock-out?

20 A. Would you like me to do the math right now?

21 Q. You can.

22 A. I worked overtime.

23 Q. Based on what?

24 A. On the time.

25 Q. Based on overtime?

1 D. Huk

2 A. Based on the time that I spent at the  
3 restaurant.

4 Q. Okay. All right. And was there any days  
5 that you worked in excess of ten hours per day?

6 A. Ten hours per day?

7 MR. DiGIULIO: Are you going to  
8 show her the exhibit?

9 Q. (Handing.)

10 A. 11:45 on that page, 11:44.

11 Q. That's not yours --

12 MR. DiGIULIO: The top pages.

13 Q. So two days, basically?

14 A. Well, based on one page that you're showing  
15 me right now. So yes, I did work more than ten  
16 hours, to answer your question.

17 Q. Twice?

18 A. Still.

19 Q. Who exactly told you that they were  
20 changing your position from a bartender to a  
21 server?

22 A. Nikolay.

23 Q. And did he give a reason?

24 A. Did he give me a reason? He said he hired  
25 this guy that won the award in Vegas, and he's



1 D. Huk

2 going to be a bartender from now on. But he's not  
3 going to take responsibilities of a server, which I  
4 was doing. Like, he's not going to help. He's  
5 going to get the same points, and he's going to be  
6 a bartender from now on.

7 Q. How long did you work at 212 as a server?

8 A. From the time that he hired another  
9 bartender.

10 Q. When was that? You only worked there a  
11 year, and it was only a year and a half ago, if  
12 that. So it's not that hard to remember.

13 A. Yeah. Well, it was a while ago.

14 Q. So you only -- you can't remember --

15 A. I can't give you exact month because I  
16 can't remember. Whenever he was hired, and you  
17 should know when he was hired.

18 Q. Well, you should know because it affected  
19 your employment, not mine.

20 How long did you act as a server until you  
21 left?

22 A. Few months.

23 Q. Two months, three months?

24 A. Maybe three months. I'm not going to  
25 answer that because I don't want to give you an

1 D. Huk

2 answer that's not right. Few months.

3 Q. No. That's fine.

4 We'll take a two-minute break. All right?

5 (Whereupon, a recess was taken at  
6 this time.)

7 (Defendant's Exhibit 1, payroll  
8 records, was marked for identification.)

9 Q. So I show you Defendant's Exhibit 1.  
10 Dagmara, please review Defendant's  
11 Exhibit 1.

12 A. Sure.

13 Q. Do you know what these are?

14 A. Yes.

15 Q. What are they?

16 A. Pay stubs.

17 Q. So earlier, I believe you said that you  
18 didn't receive pay stubs; you only received written  
19 checks?

20 MR. DiGIULIO: Objection.  
21 Mischaracterizes the testimony. You can  
22 answer.

23 Q. Well, let's go back then.

24 So did you receive these pay stubs every  
25 time you were paid?

1 D. Huk

2 A. Not every time.

3 Q. When did you not receive these?

4 A. Depending if I was sent it or not. It was  
5 no rule.

6 Q. Well, what is the -- well, look at the  
7 dates. Go through the whole file.

8 A. Sure.

9 Q. Isn't it true -- and the dates are on the  
10 top right. Isn't it true that this covered your  
11 full time that you worked at the restaurant?

12 A. Repeat the question.

13 Q. I said if you look at the dates on the top  
14 right and go through that whole exhibit --

15 A. Mm-hmm.

16 Q. -- isn't it true that this covered the  
17 complete dates that you worked at the restaurant?

18 A. (Perusing.)

19 (Unintelligible.)

20 Possibly. I'm not sure.

21 Q. So if it possibly showed the full tenure at  
22 the restaurant, then you did receive wage  
23 statements every time you were paid; is that  
24 correct?

25 A. What do you mean by "wage statement"?

1 D. Huk

2 Q. This is called a wage statement?

3 A. No, I didn't.

4 Q. You never received this every time you got  
5 paid?

6 A. No. No, I didn't. Sometimes we would  
7 receive only a --

8 (Reporter clarification.)

9 A. Sometimes we would receive just an amount  
10 to write the checks without the pay stubs.

11 Q. The times that you supposedly did not  
12 receive this, did you request this?

13 A. No.

14 Q. And the times that you did receive this,  
15 who gave this to you?

16 A. Imran.

17 Q. Based on this, the restaurant had wage  
18 statements every time you were paid; is that  
19 correct?

20 MR. DiGIULIO: Objection.

21 Mischaracterizes the exhibit.

22 A. Wait. I also want to go back because you  
23 said based on the date. I have Nino's here, so why  
24 am I looking at Nino's pay stub?

25 Q. Nino's you don't have to look at. So just

1 D. Huk

2 look at yours.

3 A. So why would you say it shows my entire  
4 tenure if it's only a few pages of my pay stubs and  
5 the rest is Nino's?

6 Q. Well, let's look at yours.

7 A. There's only few of them.

8 Q. There's not a few of them. There's a lot  
9 of them.

10 A. You said it's my entire tenure.

11 Q. So it started at 9/28/20, and it goes to --

12 MR. DiGIULIO: Missing a lot of  
13 weeks.

14 A. Yeah, I just realized it. The rest is  
15 Nino. I thought it was mine.

16 Q. It goes to June of 2021. Did you work the  
17 weeks that it states that you have under your name?

18 A. Well, yes. But I don't think it's the full  
19 thing.

20 Q. Okay.

21 A. Because we're going from 11/08, and then  
22 next one is 12/07. So we're skipping a month here.

23 Q. Well, let's look --

24 A. Then 12/07, and then 2/22. So we're  
25 skipping two months. Then another month, 3/01.

1 D. Huk

2 Then we have a following week, 5/03. So we're  
3 skipping months here -- a lot of months actually.

4 Q. Okay. These weeks that you worked, though,  
5 did you receive these statements?

6 A. Like I said before, not all the time.

7 Q. And when you closed out a check, was that  
8 only checks at the bar?

9 MR. DiGIULIO: Objection to the  
10 form. You can answer, if you know.

11 Q. In other words, when you closed -- you had  
12 an employee ID, right? And you could ring up  
13 items, right? People at the bar, or you did a meal  
14 at the bar, you closed out those checks?

15 A. I don't understand the question.

16 Q. Okay. I'll try it again.

17 Let's say you had a couple at the bar, and  
18 they decided to eat at the bar. Is that your  
19 check? Did you open up that check on the POS  
20 system?

21 A. Yes.

22 Q. And then when they were done, you closed it  
23 out, and you gave them the check, right, and took  
24 their payment?

25 A. That's how it works.

1 D. Huk

2 Q. Okay. Yeah. Okay.

3 And if they paid you in cash, did you  
4 report that as cash?

5 MR. DiGIULIO: Objection to the  
6 form of the question. You can answer.

7 Q. No. Let's say they paid -- the bill was 80  
8 bucks, and they give you a hundred bucks. Would  
9 you report that as a cash --

10 A. Well, how else would you report it?

11 Q. I don't know. I'm asking you.

12 A. I don't know either. How else can you  
13 report it if people are paying cash?

14 Q. Well, you don't know or --

15 A. No. I'm asking you.

16 Q. I'm not under questioning. You are. So I  
17 don't really care what I said.

18 A. Yes, people pay cash. You close it as  
19 cash. If people pay as a credit card, you close it  
20 as credit card. That's just how it works.

21 Q. In that instance, so they paid \$80, and  
22 they gave you \$20, did you report that as a cash  
23 tip in the system?

24 A. Report it as a cash tip in the system?

25 Q. Yes.

1 D. Huk

2 A. There was no way to report cash tip in the  
3 system.

4 Q. There was no way to report the cash tip --

5 A. We didn't do that.

6 Q. So the only way to report the cash tip,  
7 that \$20, was at the end of the night, that tip  
8 sheet?

9 A. Correct.

10 Q. So if it wasn't in the system as a cash  
11 tip, how would the management know how much cash to  
12 report?

13 A. Like I said, at the end of the night we  
14 would write it down at the back of the page.

15 Q. And did they ever ask you -- forget about  
16 at the end of the night, did they ever ask you at  
17 the end of the week how much cash tip you earned?

18 A. No one asked me that question.

19 Q. So you assumed that management would go  
20 through those cash sheets and report those cash  
21 tips; is that correct? The tip sheets, I'm sorry,  
22 and report the cash tips?

23 A. Again, I'm a bartender.

24 Q. Well, you're also a manager at your prior  
25 restaurant and a server?



1 D. Huk

2 A. Yeah, but that's not my --

3 Q. Well, you're a jack-of-all-trades. You do  
4 everything, right? And according to you, you did  
5 everything at this restaurant too, right?

6 (Simultaneous speakers.)

7 A. I did.

8 Q. You did payroll --

9 A. Yeah, but it's not my --

10 MR. DiGIULIO: Objection.

11 Mischaracterizes testimony. You can answer  
12 it if there's a question.

13 Q. Did you ever file for unemployment during  
14 any period of time while you were working at the  
15 restaurant?

16 A. No.

17 Q. Did you file for unemployment right after  
18 you stopped working at this restaurant?

19 A. No.

20 Q. No. So you never filed for unemployment  
21 related to 212 Steakhouse?

22 A. No.

23 Q. Okay. And as far as working during the  
24 pandemic, did you ever get COVID while you were  
25 working in the restaurant?

1 D. Huk

2 A. Did I get COVID when I was working?

3 Q. Right. During your employment at the  
4 restaurant towards -- at any time?

5 A. I don't think so. I don't remember that,  
6 but I don't think so.

7 Q. Did any other employees get COVID, that you  
8 know of?

9 A. Well, a lot of people were getting sick,  
10 and it wasn't necessarily related to COVID because  
11 people get sick during -- like now.

12 Q. Did you speak to anybody else, any of the  
13 other employees about --

14 MR. DiGIULIO: Objection.

15 Q. -- getting COVID or them getting COVID?

16 MR. DiGIULIO: I'm going to object  
17 to this whole line of questioning around  
18 this. It's totally irrelevant  
19 (unintelligible) invasion of privacy.

20 MR. SEGAL: I'm not sure it's  
21 invasion of privacy, but...

22 MR. DiGIULIO: I instruct her not  
23 to answer.

24 MR. SEGAL: All right. Give us one  
25 more break. We'll come back, and we'll

1 D. Huk

2 wrap this up.

3 (Whereupon, a recess was taken at  
4 this time.)

5 Q. So Dagmara, I'm going to show you  
6 Defendant's Exhibit 2 one more time. I guess this  
7 is from the earlier deposition.

8 Do you see your name on that tip sheet?

9 A. Yes.

10 Q. Okay. And is this a weekly tip  
11 declaration?

12 A. Yes.

13 Q. And does it contain both credit card tips  
14 and cash, or just credit card tips?

15 A. This is credit cards.

16 Q. Okay. And then I want to show you -- this  
17 is -- we don't have one of those marked already?

18 MR. DiGIULIO: I think we do.

19 Yeah. But you can mark it again, if you  
20 want.

21 (Whereupon, a discussion was held  
22 off the record.)

23 Q. So I'm going to show you Exhibit 3. Are  
24 you one of the servers listed on this sheet?

25 A. I'm sorry. Repeat the question.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D. Huk

Q. Are you one of the servers listed on this sheet?

A. Correct.

Q. And this is a daily, instead of the weekly that we just looked at?

A. Yes.

Q. And this contains solely credit card tips and noncash tips; is that correct?

A. Yes.

Q. Okay. Was there ever a time that you were unable to work at 212 Steakhouse due to COVID?

MR. DiGIULIO: You can answer.

A. Unable to work at the restaurant due to COVID? I don't -- no, I don't think so.

Q. Were you familiar with the law that required restaurant employees to wear masks and be vaccinated?

A. Yes.

(Continued on next page to  
accommodate jurat.)

1 Q. Did you comply with that law?

2 MR. DiGIULIO: Objection. I'm  
3 going to instruct her not to answer again  
4 for the same reasons you did before.

5 MR. SEGAL: I have no further  
6 questions. Thank you for your time.

7 MR. DiGIULIO: I have no further  
8 questions either.

9 (Time Noted: 3:03 p.m.)

10

11

12

---

DAGMARA HUK

13

14 Subscribed and sworn to before me

15 this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

16

17

18

---

Notary Public

19

20

21

22

23

24

25